

IN THE UNITED STATES DISTRICT COURT U.S. COURTS
FOR THE DISTRICT OF IDAHO

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FILED 12/9/05
CANDACE S. BURKE,
CLERK IDAHO

UNITED STATES OF AMERICA,

Plaintiff

v.

HOLLY CORPORATION,

Defendant.

CIV05-503-S-LNB

Civil Action No. _____

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and at the request of the United States Environmental Protection Agency ("EPA") and the United States Department of Agriculture Forest Service ("FS"), alleges as follows:

NATURE OF ACTION

1. The United States brings this civil action against Holly Corporation ("Defendant") under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a), as amended, to recover response costs it has incurred in responding to releases and threatened releases of hazardous substances into the environment at and from the Cinnabar Mine Site ("Site"), located near Yellow Pine, Idaho, in the Payette National Forest. The United States also seeks a declaration that the Defendant is liable for all further response costs that may be incurred by the United States in connection with the

Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c) because the releases or threatened releases of hazardous substances that give rise to the claims occurred in this judicial district.

DEFENDANT

4. Holly Corporation ("Holly") is a corporation incorporated under the laws of Delaware.

LAWS GOVERNING CLAIMS FOR RELIEF UNDER CERCLA

5. Section 104 of CERCLA, 42 U.S.C. § 9604, provides that whenever any hazardous substance is released into the environment, or there is a substantial threat of such a release into the environment, the President is authorized to act, consistent with the National Contingency Plan, to remove or arrange for the removal of, such hazardous substance.

6. The President's authority under Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) and (b), as amended, has been delegated to the Administrator of the EPA pursuant to Section 2(e) of Executive Order No. 12316, 46 Fed. Reg. 42,237 (August 14, 1981), reprinted in 42 U.S.C.A. § 9615 at 544-48.

7. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the

defenses set forth in subsection (b) of this section –

* * *

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

* * *

shall be liable for -

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan

8. Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), provides: “In any such action described in this subsection [an action for recovery of costs under Section 107 of CERCLA], the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.”

GENERAL ALLEGATIONS

9. The Defendant is a “person” within the meaning of Section 107 of CERCLA, 42 U.S.C. § 9607.

10. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

11. There are and were, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), releases and threatened releases of hazardous substances into the environment at and from the Site.

12. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42

U.S.C. § 9601(14), have been treated, stored, or disposed of at the Site. Such hazardous substances have been found at the Site.

13. As a result of the releases or threatened releases at or from the Site, the United States has incurred "response" costs as defined in Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a), for actions taken in response to the releases or threatened releases at or from the Site. The United States will continue to incur response costs in connection with the Site.

14. The Defendant has not fully reimbursed the United States for these response costs.

15. The response costs incurred by the United States in connection with the Site are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

CLAIM FOR RELIEF

CLAIM FOR RECOVERY OF RESPONSE COSTS UNDER SECTION 107(a)(2) OF CERCLA

16. Paragraphs 1-15 are realleged and incorporated by reference.

17. The Defendant was the owner and operator of the Site facility at the time of the disposal of hazardous substances at that facility.

18. The Defendant is therefore liable, under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), for all costs incurred and to be incurred by the United States in response to releases of hazardous substances at the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, respectfully requests that the Court:

1. Enter judgment against Defendant Holly for all costs incurred by the United States in response to releases or threatened releases of hazardous substances at the Site;
2. Award the United States prejudgment interest on its response costs;
3. Enter a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Defendant Holly is liable for all further response costs or damages in connection with the Site; and
4. Grant such other and further relief as is appropriate.

Respectfully submitted,

FOR THE UNITED STATES:

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division

CATHERINE R. MCCABE
Deputy Section Chief
United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section

KATHRYN C. MACDONALD
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
Ben Franklin Station, P.O. Box 7611
Washington, D.C. 20044-7611

THOMAS E. MOSS
United States Attorney
District of Idaho

OF COUNSEL:

STEPHANIE MAIRS
Assistant Regional Counsel
U.S. E.P.A. Region 10
1200 Sixth Avenue
Seattle, WA 98101

GARY FREMERMAN
Office of the General Counsel
Pollution Control Team
Room 3351 South Building
1400 Independence Ave. SW
Washington, DC 20250-1412

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of December, 2005, I caused to be served a true and correct copy of the following, **CIVIL COVER SHEET and UNITED STATES' COMPLAINT**, in US v. HOLLY CORPORATION, upon the party listed below by means of the method(s) indicated:

Attorney for Defendant Holly Corporation

*Theodore L. Garrett, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

[] U.S. Mail Postage Prepaid
[X] Hand Delivered
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[] Facsimile

Kathryn C. MacDonald